Petition

81-906

No.

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SUPREME COURT OF THE UNITED STATES

October Term, 1981

RIBHI SHUNNARAH - - - - - Petitioner

versus

COMMONWEALTH OF KENTUCKY - Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY AND APPENDIX

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November 12, 1981

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QUESTIONS PRESENTED

I. Whether KRS 194.505(3) and KRS 194.990(2) are contrary to and frustrate the full effectiveness of the Federal Food Stamp Act, Title 7 U.S.C.S. §2020(B), and are, therefore, violative of the supremacy clause of the United States Constitution.

II. Whether Petitioner was denied his Fourteenth Amendment right to Due Process of Law and his Sixth Amendment right to trial by a fair and impartial jury where the trial court refused to submit the Petitioner's tendered instruction on his theory of defense.

III. Whether Petitioner was denied his Fourteenth Amendment right to Due Process of Law and his Sixth Amendment right to trial by a fair and impartial jury where the trial court refused to allow defense counsel effective cross-examination of prosecution witnesses.

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SUPREME COURT OF THE UNITED STATES

October Term, 1981

No.

RIBHI SHUNNARAH - - - - - *Petitioner*

v.

COMMONWEALTH OF KENTUCKY - - *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY AND APPENDIX

The Petitioner, Ribhi Shunnarah, respectfully prays that a Writ of Certiorari issue to review the opinion of the Court of Appeals of Kentucky entered in this proceeding on March 6, 1981.

OPINION BELOW

The opinion of the Court of Appeals of Kentucky was not published. A Motion for Discretionary Review was filed in the Supreme Court of Kentucky on June 4, 1981. The Order of the Supreme Court of Kentucky denying the Petitioner's Motion for Discertionary Review was entered on September 14, 1981. (Appendix B, p. 25.)

JURISDICTION

The Opinion of the Court of Appeals of Kentucky affirming the Petitioner's conviction was entered on March 6, 1981, and a timely Motion for Discretionary

Review was denied by the Supreme Court of Kentucky on September 14, 1981. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides in pertinent part as follows:

> . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law . . .

The Sixth Amendment to the United States Constitution provides as follows:

> In all criminal prosecutions, the accused shall enjoy the right to expedient public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Title 7 U.S.C.S. §2024(B) provides as follows:

> Whoever knowingly uses, transfers, acquires, alters, or possesses coupons or authorization cards

> in any manner not authorized by this act or the regulations issued pursuant to this act shall, *if such coupons or authorization cards are the value of $100.00 or more, be guilty of a felony and shall, upon conviction thereof, be fined not more than $10,000.00 or imprisoned for not more than five years, or both, or if such coupons or authorization cards are of a value less than $100.00 shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than $1,000.00 or imprisoned for not more than one year, or both.*

Title 7 U.S.C.S. §2020(g) provides in relevant part as follows:

> If the secretary determines, . . . that in the administration of the food stamp program there is a failure by a state agency to comply without good cause with any of the provisions of this Act, the regulations issued pursuant to this Act, the State plan of operation submitted pursuant to subsection (d) of this section, the Secretary shall immediately inform such state agency of such failure. . . . If the state agency does not correct such failure within that specified period, the Secretary shall proceed to withhold from the state such funds authorized under sections 16(a) and 16(c) of this Act. . . .

KRS 194.505(3) provides as follows:

> No person shall, with intent to defraud knowingly use, attempt to use, acquire, transfer, forge, alter, traffic, counterfeit or possess a food stamp, food stamp identification card or medical identification card in any manner not authorized by the law.

KRS 194.990(2) provides as follows:

> *Any person who violates (3) of KRS 194.505 shall be guilty of a Class D felony.*

STATEMENT OF THE CASE

This case was tried by a jury in the Jefferson Circuit Court on February 11th and 12th, 1980. The Petitioner was charged with six counts of trafficking in food stamps in violation of KRS 194.505(3). The jury found the Petitioner guilty on all counts and fixed his punishment at three years on both Counts I and II to run consecutively with Counts III through VI, for a total of six years in the penitentiary.

The Petitioner perfected a timely appeal to the Court of Appeals of Kentucky. Petitioner alleged, among other errors, the following prejudicial rulings of the trial court which formed the basis of this Writ of Certiorari.

First, the Petitioner alleged that he was denied his Fourteenth Amendment right to Due Process of Law and his Sixth Amendment right to a fair and impartial trial when the trial court overruled Petitioner's Motion to Dismiss. That Motion alleged that KRS 194.505(3) and KRS 194.990(2) are contrary to and frustrate the full effectiveness of the Federal Food Stamp Act, Title VII U.S.C.S. §2024(B) and are, therefore, violative of the supremacy clause of the United States Constitution. It is the Petitioner's contention that §2024(B) of the Federal Food Stamp Act is comprehensive since it provides for both maximum

and minimum punishments for a violation of the Food Stamp Act and, therefore, preempts state law.

Secondly, Petitioner alleged that he was denied his Fourteenth Amendment right to Due Process of Law and his Sixth Amendment right to trial by a fair and impartial jury when the trial court refused to submit instructions on Petitioner's theory of defense. The trial court refused to instruct the jury on ignorance of the law, a specific statutory defense in Kentucky, when the evidence established that such an instruction was proper to negate the Petitioner's culpable mental state.

Third, Petitioner alleged that he was denied his Fourteenth Amendment right to Due Process of Law and his Sixth Amendment right to trial by a fair and impartial jury when the trial court refused to allow defense counsel effective cross-examination of prosecution witnesses. The trial court did not hold an in-camera hearing to determine if cross-examination for witnesses' addresses was proper or called for under the circumstances.

In its decision rendered on March 6, 1981, the Court of Appeals of Kentucky held that the Kentucky statutes did not violate the Supremacy Clause (Art VI, §2) of the United States Constitution since the Food Stamp Act does not evince an intention to "occupy the field" and since the Kentucky statutes stand as an obstacle to the accomplishment and purposes of the Food Stamp Act. [Appendix A, pp. 20-21.]

The Court of Appeals of Kentucky also held that there was not sufficient evidence in the record to raise

a question of the appellant's ignorance of the law and thereby place in issue his lack of criminal intent. [Appendix A, p. 22.]

Finally, the court held that "we do not believe that under the particular circumstances of this case the refusal of the court to require the witnesses to state their present addresses constitutes reversible error. [Appendix A, p. 23.]

On receipt of the Affirming Opinion of the Court of Appeals of Kentucky, the Petitioner filed a timely Petition for Rehearing in that Court which was denied on May 15, 1981. The Petitioner then sought Discretionary Review in the Supreme Court of Kentucky which was denied on September 14, 1981.

The Court of Appeals of Kentucky sustained Petitioner's Motion to Stay the Mandate up to and including November 13, 1981, pending consideration by this court of the within Petition.

REASONS FOR GRANTING THE WRIT

I. The Petitioner's Conviction Is Unconstitutional Since Kentucky Revised Statutes 194.505(3) and 194.990(2) Are Preempted by Title 7 §2024(B) of the Federal Food Stamp Act in That the Kentucky Statutes Frustrate and Are in Direct Conflict With the Clear Intention of Congress.

The Petitioner, prior to trial, submitted three separate motions to dismiss the indictment which were overruled by the Trial Court. Among other grounds, these motions alleged that KRS 194.505(3) and KRS

194.990(2) are preempted by Title 7 §2024(B) of the Federal Food Stamp Act since those statutes are contrary to and frustrate the clear intention of Congress.

The Court of Appeals of Kentucky upheld the rulings of the Trial Court and held as follows:

> We find nothing in the disputed state statutes which is incompatible with the Food Stamp Act, rather the state statutes appear to supplement the Act. It is true that the state statutes differ from the federal, but the former are not incompatible with nor contrary to the latter in the sense that they "stand as an obstacle to the accomplishment and execution of the full purposes and objectives" of the latter. *See Hines* v. *Davidowitz,* 312 U. S. 52, 67, 61 S. Ct. 399, 85 L. Ed. 581 (1941). The Food Stamp Act does not evince an intention that Congress has determined to "occupy the field" with respect to welfare stamp fraud, nor does the federal interest in welfare fraud appear to be do dominant that the federal system must be assumed to preclude enforcement of state laws on the same subject. See *Id.* [Appendix A, pp. 20-21.]

Petitioner submits that the Kentucky statutes do not supplement the Food Stamp Act, but rather, stand as an obstacle to the clear intentions of the Act

It is clear that Congress intended to occupy the field of Food Stamp Regulation, especially in the area of criminal punishments for violations of the Act. Title 7 U.S.C.S. §2024(B) is strong evidence of Congressional intention to occupy the field since it estab-

lishes the parameters for both misdemeanor and felony violations. That statute provides that a person is guilty of a *felony* if he knowingly uses, transfers, acquires, alters, or possesses coupons or authorization cards valued at over $100.00 or more. The federal statute further provides that a person is guilty of a *misdemeanor* if such coupons or authorization cards are of a value less than $100.00. In essence, under §2024(B), it was the clear intention of Congress that a minimum criteria of $100.00 must be satisfied before a felony conviction can be imposed. Therefore, Federal law preempts the Kentucky statutes since Congress has unmistakably ordained to provide punishments for both felony and misdemeanor violations of the Act. See *Florida Lime & Avocado Growers* v. *Paul,* 373 U. S. 32, 142 L. Ed. 2d 248, 83 S. Ct. 1210 (1963).

The Kentucky statutes in question frustrate and are in direct conflict with this clear intention of Congress. The intended purpose of §2024(B) is frustrated, since KRS 194.990(2) summarily imposes a felony conviction, irrespective of the value of the food stamps in question. In Kentucky an individual could be convicted of a felony for unlawfully possessing food stamps valued at only 50 cents or $1.00. Such punishment is clearly excessive and represents an obstacle to the execution of the full purposes of §2024(B) of the Food Stamp Program.

This Court has held that a state statute is in violation of the Supremacy Clause if it stands as an obstacle to the execution of the full purposes and

objectives of Congress. *Hines* v. *Davidowitz,* 312 U. S. 52, 67, 85 L. Ed. 581, 587, 61 S. Ct. 399 (1941). *Accord, Perez* v. *Campbell,* 402 U. S. 637, 29 L. Ed. 2d 233, 91 S. Ct. 1704 (1971). [Numerous citations omitted.]

In fact, many years ago, Chief Justice Marshall pointed out that acts of the state legislatures which interfere with, or are contrary to the law of Congress, are invalid under the Supremacy Clause of the Constitution, Article VI [Cl. 2]. *Gibbons* v. *Ogden,* 6 L. Ed. 23, 73 (1824).

The Court of Appeals of Kentucky was wrong in holding that the Kentucky statutes are not incompatible with or contrary to the Food Stamp Act. It is clear that the state statutes frustrate and stand as an obstacle to the intended purpose of Congress by allowing a person unlawfully possessing food stamps valued at only 50 cents or $1.00 to be convicted of a felony. A more blatant conflict and disregard of Congressional intent is hardly imaginable.

Furthermore, there is no justification in the Court of Appeals holding that Federal law is not preemptive since the Food Stamp Act does not evince an intention that Congress has determined to "occupy the field" with respect to welfare stamp fraud. While it is true that Congress may manifest its intent to displace the states from a field by specifically stating in the Act, it is equally true that such intent may be manifested by Congress in ways other than by specific language.

Title 7 U.S.C.S. §2020 specifically limits the authority of state agencies to that of administering the food

stamp program in accordance with the regulations provided in the Food Stamp Act. In fact, section (g) of §2020 specifically prohibits the state from devising a plan which fails to comply with *any* of the provisions of the Food Stamp Act. Petitioner submits that if a state agency is prohibited from devising a plan which fails to comply with any of the provisions of the Food Stamp Act, then it must surely follow that a state legislature's passage of a law which fails to comply with any section of the Act is likewise prohibited. KRS 194.505 and KRS 194.990(2) should be declared unconstitutional since it cannot be disputed that these statutes are in noncompliance with the clear statutory manadate of §2024(B).

Part 271.4 of the regulations issued by the Secretary of the U. S. Department of Agriculture lends further support to the Petitioner's contention that Federal law has preempted the field of Food Stamp regulation. That regulation delineates the state's responsibility in administering the Food Stamp Program. It is important to note that there is absolutely no mention of the state's responsibility or authority to prescribe punishment for a violation of the Act. In fact, part 271.5 specifically states that food coupons are obligations of the United States Government. The only logical conclusion to be drawn from these regulations is that only Congress, and not the state, can prescribe punishment for violators of the Food Stamp Program. This conclusion is bolstered by the legislative history of the Food Stamp Act of 1964 which expressly states that violations under the Act are vio-

lations of Federal law and as such Federal penalties must be prescribed.

This Court should grant the Writ of Certiorari since the Kentucky statutes discussed above are in conflict with the Supremacy Clause of the United States Constitution and, therefore, preempted by federal law.

II. This Court Can Now Decide for the First Time Under What Circumstances a Defendant Is Denied His Sixth Amendment Right to a Fair and Impartial Trial and His Fourteenth Amendment Right to Due Process of Law Where a Trial Court Refuses to Instruct the Jury on the Defendant's Affirmative Defense.

The trial court committed error in refusing to accept the Petitioner's tendered Instruction No. 7 on ignorance of the law which would have established his only defense, an affirmative defense. The Court of Appeals upheld the trial court's ruling and held that they did not "find sufficient evidence in this record to raise a question of the appellant's ignorance of the law and thereby place in issue his lack of criminal intent". [Appendix A, p. 22.]

The position that Kentucky law takes upon an affirmative defense instruction is very staunch and clear. In the case of *Kohler* v. *Commonwealth,* Ky., 492 S. W. 2d 198 (1973), the highest court of Kentucky, formerly the Court of Appeals, flatly stated that when a defendant confesses the doing of an act of which he stands accused but asserts a legal excuse or justification exonerating him from criminal intent (i.e., he pleads an affirmative defense), the court must submit

an instruction upon his theory of defense to the jury in concrete form.[1] Further, under Kentucky law, the trial court must instruct the jury on every phase of the case represented by the evidence or deducible from or supported by testimony to *any extent*. *Allen* v. *Large,* Ky., 239 S. W. 2d 225 (1951). Unfortunately, this Court and other federal courts stand mute on this point.

In the instant case, there was testimony from the Petitioner's wife [T.E., Vol. II, pp. 219-223] that no one from the Department of Agriculture ever set down and explained the intricacies and basic premises of the Food Stamp Program to the ill-educated Petitioner and his wife. There was also testimony from the government's own witness, Mr. James Anderson, [T.E., Vol. I, pp. 63-67] that there were no records in the Department of Agriculture's files that any one from that office had ever explained the Food Stamp procedures to the Petitioner. Clearly, this testimony satisfies the "supported by testimony to any extent" requirement of *Allen* and would, therefore, have justified an instruction on ignorance of the law.

KRS 501.070 specifically provides for the Petitioner's requested instruction No. 7 on ignorance of the law. That statute relieves a defendant of criminal liability if his ignorance or mistake negates the culpable mental state needed to establish the commission

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[1]Until January 1, 1976, Kentucky had no intermediate appellate court and its highest court was the Court of Appeals of Kentucky. In 1974 Chapter 84 of the 1974 Acts of the General Assembly was adopted creating the Kentucky Supreme Court.

of the charged offense. The statute provides in relevant part as follows:

> (1) A person's ignorance or mistake as to a matter of fact or law does not relieve him of criminal liability unless:
>
> (a) Such ignorance or mistake *negatives* the existence of the culpable mental state required for commission of an offense.

Thus, such an instruction was not only proper but mandatory. In view of the foregoing, the trial court should properly have instructed the jury that evidence that the accused acted because of ignorance of the law could be considered by the jury in determining whether or not the accused acted or failed to act with the specific intent to defraud.

Had the trial judge given instruction No. 7 under the dictates of *Kohler,* the jury would have been allowed the opportunity to pass upon the credibility of the Petitioner's affirmative defense or at least consider it in mitigation of criminal liability. By upholding the trial court's failure to so instruct, the Court of Appeals of Kentucky has literally stripped this Petitioner of his only defense and, therefore, deprived him of his Sixth Amendment right to a fair and impartial trial.

III. It Is a Fundamental Violation of a Defendant's Sixth Amendment Right to a Fair Trial, Where a Trial Court Refuses to Allow Defense Counsel Effective Cross-examination of Prosecution Witnesses.

The trial court neglected to hold an in-camera hearing and refused to allow Petitioner's counsel, on cross-examination, to question the Commonwealth's government-paid witnesses (Dolly Smith, Teresa Cannon, Belinda Green; Annie Smith) as to their addresses at the time of the commission of the offense or at the time of their testimony [T.E., Vol. II, p. 151; 161-162; 186-187]. The Court of Appeals upheld the trial court's ruling and held that "We do not believe that under the particular circumstances of this case the refusal of the court to require the witnesses to state their present addresses constitutes reversible error." [Appendix A, p. 23.]

This Court has expressly stated in the cases of *Alford* v. *United States,* 282 U. S. 687 (1931) and *Smith* v. *Illinois,* 390 U. S. 129 (1968) that to deny a criminally accused the right to the name and address of a government witness through cross-examination is to deny the accused "the opportunity to place the witness in his proper setting and put the weight of his testimony and his credibility to a test". *Id., Alford,* at p. 692. By refusing to allow counsel to cross-examine witnesses as to their addresses, the trial court prevented counsel from beginning at the logical starting point and precluded the Petitioner from opening "countless avenues of in-court examination and out-of-court investigation". *Id., Smith.,* at. p. 131.

Some constraint upon cross-examination might have been proper if there had been threats made on the lives of the witnesses in the context of the trial or if the witnesses had been special agents planted in the community to observe or investigate criminal activity. The record establishes that neither of these factors were present. In fact, the record is totally devoid of any evidence that would suggest that the witnesses were in fear for their safety. Rather, their refusal to testify was based *solely* on the unfounded assertion that the Petitioner would find out their addresses and come back in the future to do them harm. [T.E., Vol. I, p. 149]. In short, the Petitioner was wrongfully denied his constitutionally protected right to meaningful cross-examination of prosecution's witnesses based totally on *mere* speculation of some future harm to the witnesses.

CONCLUSION

The Court of Appeals of Kentucky, in upholding this conviction, violated the Petitioner's right to substantive due process of law as guaranteed by the Fourteenth Amendment of the United States Constitution and the Petitioner's Sixth Amendment right to trial by a fair and impartial jury. This Court should grant certiorari to hear this case since the statute under which the Petitioner was convicted is in violation of the Supremacy Clause of the United States Constitution. Furthermore, the Petitioner's conviction is unfair since he was not allowed to tender an affirmative defense instruction and was also denied his right to effective cross-examination of prosecution witnesses. For the reasons hereinabove stated, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

OPINION RENDERED: MARCH 6, 1981; 2:00 P.M.
NOT TO BE PUBLISHED

COURT OF APPEALS OF KENTUCKY

80-CA-1326-MR

RIBHI SHUNNARAH - - - - - *Appellant*

v.

COMMONWEALTH OF KENTUCKY - - - *Appellee*

Appeal from Jefferson Circuit Court
Honorable Charles M. Leibson, Judge
Indictment No. 79-CR-0885

AFFIRMING

BEFORE: VANCE, WILHOIT, and WINTERSHEIMER, Judges.

WILHOIT, JUDGE. Ribhi Shunnarah appeals from his conviction in the Jefferson Circuit Court of six counts of trafficking in food stamps in violation of KRS 194.505(3). He received a sentence of three years' imprisonment on each count; however, because some of the sentences were ordered to run concurrently, the appellant faces a maximum of six years' confinement as the result of these charges.

The evidence at trial showed that on six separate occasions the appellant, who operated a grocery store, bought food stamps from agents of the Department for Human Resources, in each instance paying an agent cash equal to sixty percent of the face value of the stamps. On one occasion one of the agents, who had previously sold the ap-

pellant $80.00 worth of food stamps for $48.00, telephoned him and asked if he knew where she could "get rid of $200 worth of food coupons" for a friend. The appellant told her to bring the stamps to his store but not to bring her friend "because he didn't know [the friend] that good." The following day the agent sold the appellant $120.00, instead of $200.00, worth of food stamps and received $72.00 from him. The appellant told her not to tell anyone about that transaction.

The appellant argues that the trial court erred in denying his motion to dismiss the indictment against him. The grounds for dismissal of the indictment are set out as follows:

1. The subject matter of KRS 194.505 and 194.990(2) was not properly listed in the proclamation convening the 1979 extraordinary session of the General Assembly, and, therefore, those statutes are void under Section 80 of the Kentucky Constitution;
2. KRS 194.505 and 194.990(2) are contrary to and frustrate the full effectiveness of Title 7 U.S.C. §2024(b) and are, therefore, violative of the Supremacy Clause of the United States Constitution;
3. §2024(b) preempts KRS 194.505 and 194.990(2) since that [federal] statute provides for the maximum and minimum punishment for a violation of the Food Stamp Act and is, therefore, comprehensive;
4. KRS 194.505(3) is so vague in its definition of the offense as to force the defendant to speculate as to its meaning in violation of the Due Process Clause of the United States Constitution.

KRS 194.505 and 194.990 were enacted by the 1979 extraordinary session of the General Assembly. The appellant maintains that the proclamation issued by Acting

Governor Thelma Stovall on November 17, 1978, convening an extraordinary session did not include the subject matter of welfare fraud and that Governor Julian Carroll had no authority to supplement the proclamation of Acting Governor Stovall by his proclamation of December 8, 1978, which amended the proclamation of Acting Governor Stovall to add additional subjects, including welfare fraud, for the consideration of the General Assembly. We note, however, that the proclamation of Acting Governor Stovall called for an extraordinary session to be convened on Monday, December 11, 1978. On December 13, 1978, Governor Carroll, by proclamation, convened an extraordinary session of the General Assembly to begin on Monday, January 8, 1979, and it is this session which passed the statutes in question. Aside from the fact that a governor has a perfect right by proclamation to provide for other subjects to be considered by an extraordinary session of the General Assembly in addition to the subject or subjects contained in the initial proclamation convening the session, *Stickler* v. *Higgins,* 269 Ky. 260, 106 S. W. 2d 1008 (1937), the proclamation convening the General Assembly on January 8, 1979, did list as a subject of the call "[t]he enactment of legislation relating to welfare fraud."

The Congress enacted the Federal Food Stamp Act of 1977, 7 U.S.C.A. §§ 2011-2027 (Supp. 1980) to "permit low-income households to obtain a more nutritious diet through normal channels of trade" by means of a food stamp program. *Id.* § 2011. The program is administered jointly by the federal government and the individual states participating in it. *Id.* § 2020. Section 2024(b) of the Act makes it a felony to use, transfer, acquire, alter, or possess stamps or coupons in any manner not authorized by the Act or regulations issued pursuant thereto, if the stamps have a value of $100 or more, and a misdemeanor, if the

stamps have a value of less than $100. KRS 194.505(3) provides:

> No person shall, with intent to defraud, knowingly use, attempt to use, acquire, transfer, forge, alter, traffic, counterfeit or possess a food stamp, food stamp identification card or medical identification card in any manner not authorized by law[.]

KRS 194.990(2) makes violation of KRS 194.505(3) a Class D felony.

It has long been recognized that merely because there are federal laws making certain conduct criminal an individual state is not necessarily precluded from enacting through its police power laws rendering the same conduct a state crime. *Gilbert* v. *Minnesota*, 254 U. S. 325, 41 S. Ct. 125, 65 L. Ed. 287 (1920); *Fox* v. *Ohio*, 5 How. 410, 12 L. Ed. 213 (1847). A state is precluded from such action by the Supremacy Clause (art. VI, §2) of the United States Constitution only when its laws are incompatible with the federal laws on the subject, *Gibbons* v. *Ogden*, 22 U. S. (9 Wheat.) 1, 6 L. Ed. 23 (1824), or the federal laws manifest an intent by the Congress to "occupy the field" to the exclusion of the states. *Pennsylvania* v. *Nelson*, 350 U. S. 497, 504, 76 S. Ct. 477, 100 L. Ed. 640, 653 (1956). We find nothing in the disputed state statutes which is incompatible with the Food Stamp Act, rather the state statutes appear to supplement the Act. It is true that the state statutes differ from the federal, but the former are not incompatible with nor contrary to the latter in the sense that they "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives" of the latter. *See Hines* v. *Davidowitz*, 312 U. S. 52, 67, 61 S. Ct. 399, 85 L. Ed. 581 (1941). The Food Stamp Act does not evince an intention that Congress has determined to

"occupy the field" with respect to welfare stamp fraud, nor does the federal interest in welfare fraud appear to be so dominant that the federal system must be assumed to preclude enforcement of state laws on the same subject. *See id.* As observed by the trial court, the Act plainly contemplates a joint endeavor administered jointly by the federal government and the states and involving the expenditure of funds by both. Enforcement of the state penal sanctions presents no serious danger of conflict in the administration of this joint program. *See Pennsylvania* v. *Nelson, supra. See also State* v. *Jeske,* 13 Wash. App. 118, 533 P. 2d 859 (1975).

We do not agree with the appellant that KRS 194.505(3) is unconstitutionally vague because it uses the term "traffic" and that term is not defined anywhere in the statutes. When that term is read in conjunction with the rest of this particular statute, a person of ordinary intelligence would be given fair notice of the kind of conduct proscribed by the word "traffic." *See United States* v. *Batchelder,* 442 U. S. 114, 99 S. Ct. 2198, 60 L. Ed. 2d 755 (1979). We have no doubt that "citizens who desire to obey the statute will have no difficulty in understanding it [.]" *Colten* v. *Commonwealth,* Ky., 467 S. W. 2d 374, 378 (1971), *aff'd,* 407 U. S. 104, 92 S. Ct. 1953, 32 L. Ed. 2d 584 (1972). Likewise, we find no reversible error in the trial court's defining "trafficked" as used in its instructions to mean "to engage in a commercial activity." We believe this to be a correct definition of that word and of the word "traffic" as used in the statute. *See* KRS 446.080(2) and (4). This definition did no more than clarify the issues to be decided by the jury and was certainly not prejudicial to the appellant. There is nothing in *Graves* v. *Dairyland Insurance Group,* Ky., 538 S. W. 2d 42 (1976), which would preclude the court from using the definition which it did, although that definition was taken from a dictionary. The real question is

whether the definition given fairly defined the term as used in the statute, not whether or not the definition came from a dictionary or textbook.

The appellant also complains that the trial court erred when it refused to give his tendered instruction stating that ignorance of the law could be considered by the jury in determining whether he had acted with specific intent to defraud. This jurisdiction has long recognized that a specific instruction on intent should be given where the evidence is such as to make an issue as to the defendant's intent. *Jewell* v. *Commonwealth,* Ky., 549 S. W. 2d 807 (1977); *Kohler* v. *Commonwealth,* Ky., 492 S. W. 2d 198 (1973); *Luttrell* v. *Commonwealth,* 250 Ky. 334, 63 S. W. 2d 292 (1933). However, we do not find sufficient evidence in this record to raise a question of the appellant's ignorance of the law and thereby place in issue his lack of criminal intent. There was testimony that he could neither read nor write and that no one from the Department of Agriculture had explained the food stamp program to him. There was also evidence that his wife may have been ignorant of the law, although even she admitted knowing that the stamps were to be used "[j]ust to buy food." It would seem that only the appellant could have known whether he was ignorant of the law against trafficking at the time he bought the stamps, yet he chose not to testify. There was no evidence from him or, for that matter, anyone else sufficient to raise the question. *Brown* v. *Commonwealth,* Ky., 555 S. W. 2d 252 (1977); *Thomas* v. *Commonwealth,* Ky. App., 587 S. W. 2d 264 (1979).

The appellant also objects to the court's instruction to the jury defining the phrase "in a manner not authorized by law" found in KRS 194.505(3) to include "in a manner not authorized by the Federal Food Stamp Act and Federal Regulations adopted pursuant thereto." We believe that the whole purpose of the statute is to prohibit the use, etc.,

of food stamps in any manner not authorized by either state or federal law. The definition employed by the court merely clarified the statutory intent for the jury.

The appellant maintains that he was prejudiced by the refusal of the trial court to permit his counsel in cross-examination to question the witnesses who had sold stamps to the appellant as to the specific address of their residences. The witnesses declined to give their present address because of fear of some reprisal by the appellant. The court did permit the defense to ascertain the address of any witness at the time when she sold stamps to the appellant provided that address was not her address at the time of trial. Each witness was also required to state the general geographical area of Louisville in which she lived. We do not believe that under the particular circumstances of this case the refusal of the court to require the witnesses to state their present addresses constitutes reversible error. *See United States* v. *Fife,* 573 F. 2d 369 (6th Cir. 1976); *United States* v. *Saletko,* 452 F. 2d 193 (7th Cir. 1971), *cert. denied,* 405 U. S. 1040, 92 S. Ct. 1311, 31 L. Ed. 2d 581 (1972). Better practice would seem to dictate that an in camera hearing be held to determine if there were a factual basis for the witnesses' fear. *United States* v. *Fife, supra.* However, the information actually given by the witnesses seems sufficient to place each "in [her] proper setting." *Alford* v. *United States,* 282 U. S. 687, 692, 51 S. Ct. 218, 219, 75 L. Ed. 624 (1931). Unlike *Smith* v. *Illinois,* 390 U. S. 129, 88 S. Ct. 748, 19 L. Ed. 2d 956 (1968), the witnesses here gave their real names and the geographical area of the City of Louisville in which they lived.

There is no merit whatsoever to the appellant's argument that there was insufficient evidence under the standard enunciated in *Jackson* v. *Virginia,* 443 U. S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979), to support his conviction.

Finally, we do not find that any of the other allegations of error made by the appellant, even if they were error, would either individually or collectively require reversal.

The judgment of the trial court is affirmed.

WINTERSHEIMER, JUDGE, CONCURS.

VANCE, JUDGE, CONCURS IN THE RESULT.

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APPENDIX B

SUPREME COURT OF KENTUCKY

81-SC-377-D
(80-SC-1326-MR)

RIBHI SHUNNARAH - - - - - - - *Movant*

v.

COMMONWEALTH OF KENTUCKY - - - *Respondent*

Jefferson Circuit Court
#79-CR-0885

ORDER DENYING MOTION FOR DISCRETIONARY REVIEW

The motion of Ribhi Shunnarah for a review of the decision of the Court of Appeals is denied.

ENTERED September 14, 1981.

(s) John S. Palmore
Chief Justice

APPENDIX C

COURT OF APPEALS OF KENTUCKY

No. 80-CA-1326-MR

RIBHI SHANNARAH - - - - - *Appellant*

v.

COMMONWEALTH OF KENTUCKY - - - *Appellee*

Appeal from Jefferson Circuit Court
Action No. 79-CR-0885

ORDER

Having considered the appellant's motion to stay the finality of the opinion in this appeal under CR 76.44(b) and having considered the response to the motion and having been otherwise sufficiently advised, the Court ORDERS that the motion be, and it is hereby, GRANTED. The finality of the opinion entered herein on March 6, 1981, is hereby stayed until November 13, 1981.

ENTERED: September 30, 1981

(s) John P. Hayes, Chief Judge
Court of Appeals

Opposition

Office - Supreme Court, U.S.
FILED
DEC 14 1981
ALEXANDER L. STEVAS
CLERK

No. 81-906

SUPREME COURT OF THE UNITED STATES

October Term, 1981

RIBHI SHUNNARAH - - - - Petitioner

versus

COMMONWEALTH OF KENTUCKY - Respondent

On Petition for a Writ of Certiorari to the
Supreme Court of Kentucky

THE BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

I. Does the Federal Food Stamp Act, 7 U.S.C. §2020 (B) prohibit enforcement of Kentucky Revised Statutes 194.500, *et seq.*, pursuant to a preemption doctrine.

II. Does the United States Constitution require a trial court to give an instruction on petitioner's purported ignorance of the law when there was no evidence to support such an instruction.

III. Under the facts of this case, did the United States Constitution mandate that a trial judge require witnesses on cross examination to give their specific addresses when such witnesses were in fear of petitioner.

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SUPREME COURT OF THE UNITED STATES

October Term, 1981

No. 81-906

RIBHI SHUNNARAH - - - - *Petitioner*

v.

COMMONWEALTH OF KENTUCKY - - *Respondent*

THE BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

The opinion below from the Court of Appeals of Kentucky is styled *Ribhi Shunnarah* v. *Commonwealth of Kentucky.* The opinion is dated March 6, 1981, is unpublished, and is correctly set out in the appendix of Petitioner's Petition for Writ of Certiorari.

JURISDICTION

Petitioner's application for a writ of certiorari cites 28 U.S.C. §1257(3). Petitioner, however, has failed to demonstrate a conflict between the decision of the Court of Appeals of Kentucky and any provisions of the United States Constitution or decisions of this Court so as to warrant a review of the decision. Accordingly, the petition should be denied.

COUNTERSTATEMENT OF THE CASE

Respondent accepts as being substantially correct the procedural history and the material facts as presented in the Petition. Certain aspects of the underlying facts, however, need explanation or clarification.

After a jury trial, petitioner was found guilty of six counts of trafficking in food stamps in violation of Kentucky Revised Statute (hereinafter KY. REV. STAT.) 194.505. The Judge of the Jefferson Circuit Court sentenced petitioner to a maximum term of imprisonment of six (6) years.

Petitioner and his wife operated a grocery known as Parkway Supermarket in Jefferson County. At one time, sixty and four-tenths percent (60.4%) of petitioner's food business was shown to be food-stamp business. The tract average for other stores in the area was twenty-three and five-tenths (23.5%) percent. Representatives of the Kentucky Department for Human Resources investigated petitioner by hiring investigative aides to enter petitioner's business with food stamps. On six different occasions petitioner trafficked in food stamps by purchasing the stamps for cash instead of food. Petitioner paid sixty percent (60%) of the value of the food stamps to the investigative aides. On the other hand, petitioner received one hundred (100) cents to the dollar ($1.00) for each food stamp coupon.

On June 13, 1979, under the direction of a representative for the Kentucky Department for Human Resources, Ms. Dolly Smith called petitioner and asked

him if he knew where she could get rid of some food stamps. Petitioner answered in the affirmative and told her to come on down. On June 18, 1979, Ms. Smith, along with a witness, went to the Parkway Supermarket and after purchasing some groceries asked the petitioner if he knew where she could get rid of eighty dollars' ($80.00) worth of food stamps. Petitioner instructed her to take her groceries to the car and return. After returning, petitioner gave her forty-eight dollars ($48.00) for the food stamps. Again, on June 19, 1979, Ms. Smith telephoned petitioner and asked him if he knew where she could get rid of two hundred dollars' ($200.00) worth of food coupons that belonged to a friend. Petitioner told Ms. Smith to come into the store and not to bring her friend because he did not know her that well. Ms. Smith went into the store with a hundred and twenty dollars' ($120.00) worth of coupons instead of two hundred dollars' ($200.00) worth. Ms. Smith gave the hundred and twenty dollars' ($120.00) worth of food stamps to petitioner, who gave her seventy-two dollars ($72.00) in exchange. Significantly, petitioner told Ms. Smith on June 20, 1979, that she was not to tell anyone else about the transaction.

On June 21, 1979, Belinda Green, accompanied by Rachael White who acted as a witness, went into the Parkway Supermarket and asked petitioner if he wanted to buy some food stamps. Petitioner asked Ms. Green how much she had and when she told him that she had a forty dollar ($40.00) book, he stated that he would give her twenty-four dollars ($24.00) for it.

The transaction took place at the counter of the store. Again, on June 26, 1979, Ms. Green, along with Rachael White, went into the store and first asked an employee of petitioner whether petitioner would want to buy some food stamps. The employee directed Ms. Green to petitioner at the back of the store, and Ms. Green gave petitioner the forty dollar ($40.00) book and he gave her the twenty-four dollars ($24.00) in return. The second transaction took place in the back of the meat counter. On July 19, 1979, Ms. Annie Smith, the mother of Dolly, called petitioner on the telephone, who told her to bring the stamps on down to the store. Ms. Smith handed petitioner forty dollars' ($40.00) worth of food stamps and he stated that he could only give her twenty-four dollars ($24.00). Ms Smith agreed and petitioner handed her the money.

On July 20, 1979, Ms. Rachael White, an investigator for the Kentucky Department for Human Resources, bought some groceries at the Supermarket and asked petitioner whether he wanted to buy some food stamps. Petitioner gave Ms. White twenty-four dollar ($24.00) for a book with forty dollars' ($40.00) worth of food stamps in it.

Petitioner originally applied for a permit to receive food stamps on February 23, 1976. On that same day a representative for the United States Department of Agriculture visited the store as part of their education process. On April 4, 1976, a representative of the Food and Nutrition Service of the Department of Agriculture visited petitioner and reviewed pertinent regulations concerning food stamp transactions. On December 13,

1976, another visit to the Parkway Supermarket was made by the Food and Nutrition Service. The reason for the visit was educational. In August, 1977, the Department again visited the store. In November, 1977, the store was again contacted by the Department, and the Department's regulations concerning the sale of ineligible items not to be sold, change procedures, loose coupons and bank deposits, and bottle deposits were discussed. Effective January 1, 1979, the food stamp program regulations were changed in part and all stores were required to reapply. Petitioner reapplied on March 25, 1979, and in his reapplication form acknowledged that the firm had reviewed and understood various regulations concerning food stamp procedures and requirements. Under the regulations a retail food store is not permitted to buy food stamps from customers. Such food stamps can only be used for the purchase of food. The Kentucky Food Stamp Law [KY. REV. STAT. 194.500, *et seq.*] was passed by the 1979 Extraordinary Session of the Kentucky General Assembly and became effective February 10, 1979. The statute among other things makes it a felony for an individual, with the intent to defraud, to knowingly use, acquire, transfer, forge, alter, traffic, counterfeit or possess a food stamp in any manner not authorized by law. [KY. REV. STAT. 194.505(1)(b)].

Petitioner did not take the stand in his own defense. His chief witness was his wife, who testified that petitoner cannot read or write, but can sign his name. At the conclusion of the evidence and the jury's deliber-

ation, the jury returned with a verdict of guilty on all six counts.

On March 6, 1981, the Court of Appeals of Kentucky affirmed the judgment of the trial court. The court reasoned, among other things, that when Congress enacted the Federal Food Stamp Act of 1977 it envisioned a program administered jointly by the federal government and the individual states participating in it, and that therefore the federal statute did not preempt state enforcement; petitioner had presented no evidence indicating an ignorance of the law and therefore was not entitled to an instruction to that effect; and, since each witness was required to state the general geographic area of Louisville in which he lived, reversible error was not committed by the refusal of the court to require the witnesses to state their present addresses. Petitioner's Petition for Rehearing was denied on May 15, 1981. His Motion for Discretionary Review to the Supreme Court of Kentucky was denied on September 14, 1981.

REASONS FOR NOT GRANTING THE WRIT OF CERTIORARI

ARGUMENT

I

The Federal Food Stamp Act Does Not Prohibit Enforcement of Ky. Rev. Stat. 194.500, *et seq.*, Pursuant to a Preemption Doctrine.

Petitioner has asked his court to grant *certiorari* in order to rule that the Federal Food Stamp Act of

1977 preempts and prohibits the Commonwealth of Kentucky from protecting its citizens against those who would traffic in food stamps. It is a well-established principle of law that articles which lend themselves to illegal uses are subject to the police powers of the state.

The Federal Food Stamp Program [7 U.S.C. §2011] was enacted to safeguard the health and well being of the nation's population by raising levels of nutrition among low-income households. The Act envisions a cooperative effort between the federal government and the various state governments and agencies. [7 U.S.C. §2020]. Nowhere in the Act is there a suggestion that Congress intended federal preemption of the field so that a state could not prohibit unlawful trafficking in food stamps. In fact, under Section 2015 of the Act [7 U.S.C. §2015] it might be presumed that Congress envisioned state action for welfare fraud through food stamps.[1] Furthermore, the Act anticipates state prosecutions by providing for payment of seventy-five (75%) of the cost of state food-stamp program investigations and prosecutions. [7 U.S.C. §2025].

The courts have generally held that there is usually no preemption of a state law by a federal law unless there is a direct, irreconcilable conflict between expressed provisions of the state and federal laws.

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[1] 7 U.S.C. §2015(b) provides that the right to be eligible to participate in the food-stamp program may be suspended after an individual has been found by a court of appropriate jurisdiction with a state or political subdivision thereof, or the United States as prosecutor or plaintiff to have been criminally or civilly fraudulent in the transfer of coupons.

American Motors Sales v. *Division of Transportation*, 592 F. 2d 219 (4th Cir. 1979). As noted by the court in *Pharmaceutical Society of New York* v. *Lefkowitz*, 586 F. 2d 953 (2nd Cir. 1978):

> ". . . The criteria for determining whether there has been federal preemption are (1) the pervasiveness of federal regulation, (2) the dominance of the federal interest, (3) the federal and state objectives to be obtained, and (4) the existence of actual conflict between the state and federal statutes, including whether the state law is an obstacle to the purposes and objectives of congress."
>
> *Id.* 586 F. 2d at 958.

It is obvious under the tests enumerated under *Pharmaceutical Society of New York* v. *Lefkowitz*, *supra*, that because of the anticipated cooperative effort between the federal and state governments, and since both the federal and state governments are aiming towards the same objectives, and since there is no conflict between the state and federal statutes concerning the food-stamp program, there is no preemption by the federal government of the state's statute in this case.

Petitioner's reliance upon *Florida Lime and Avocado Growers Inc.*, v. *Paul*, 373 U. S. 132, 83 S. Ct. 1210, 10 L. Ed. 2d 248 (1963) is misguided. In *Florida Avocado Growers* v. *Paul*, *supra*, this Court held that a California statute concerning the transportation for sale of avocados in California was not necessarily preempted by the Agricultural Adjustment Act. The Court stated:

> "The test of whether both federal and state regulations may operate, or the state regulation must give way, is whether both regulations can be enforced without impairing the federal superintendence of the field, not whether they are aimed at similar or different objectives.
>
> The principle to be derived from our decisions is that federal regulation of a field of commerce should not be deemed preemptive of state regulatory power in the absence of persuasive reasons—either that the nature of the regulated subject matter permits no other conclusion, or that the congress has unmistakenly so ordained. . . .
>
> *Id.* 10 L. Ed. 2d at 257.

In the present case petitioner complains that the penalties for violating the state and federal statute might be different. Such a difference would not of course in any way interfere with the objectives of the federal government in administering the Food Stamp Act. A more stringent penalty for trafficking in food stamps is certainly within the police power of the state.

A reading of the Federal Food Stamp Act in conjunction with KY. REV. STAT. 194.500 *et seq.* leads to the unmistakable conclusion that congress did not intend to supersede the state law as it relates to prohibiting the trafficking in food stamps. The Court of Appeals of Kentucky was therefore correct in its determination that the Kentucky statute was not preempted by the Federal Food Stamp Act. Since there is no conflict between the decision of the Court of Appeals of Kentucky and the Constitution of the

United States or the decisions of this Court, the Petition for Certiorari should not be granted.

II.

There Was No Constitutional Requirement That the Trial Court Accept Petitioner's Ignorance-of the-Law Instruction, Since There Was No Evidence to This Effect.

Petitioner's contention appears to be in direct conflict with the settled maxim that "ignorance of the law is no excuse." If such ignorance of the law could be pled as an affirmative defense, the courts would be flooded with this excuse for law violations. Every man is presumed to know the law and to hold otherwise would cause a disruption of our legal system.

As noted by the United States Supreme Court in *United States* v. *International Minerals & Chemical Corporation,* 402 U. S. 558, 91 S. Ct. 1967, 29 L. Ed. 2d 178 (1971):

> "The principal that ignorance of the law is no defense applies whether the law be a statute or a duly promulgated and published regulation."
>
> *Id.* 29 L. Ed. 2d at 182.

It is therefore apparent that petitioner was not entitled to an affirmative defense concerning his alleged ignorance of the law. Since petitioner was not entitled to an affirmative defense instruction, the court did not commit error in refusing it. As noted by the Court of Appeals of Kentucky in its decision, there was not sufficient evidence to raise a question of petitioner's

ignorance of the law. Petitioner chose not to testify in this case and without such testimony his claim must fail.

Because there is no conflict between the decision of the Court of Appeals of Kentucky and the United States Constitution or decisions of this Court, the Petition for Writ of Certiorari should be denied.

III.

The Trial Court Did Not Commit Prejudicial Error by Refusing to Require Witnesses on Cross Examination to Give Their Specific Addresses When Such Witnesses Were in Fear of Petitioner.

On cross examination, counsel for petitioner asked each of the investigative aides to give their specific addresses. Each of the aides refused because of a fear of petitioner. The Commonwealth represented to the court that the witnesses were afraid of petitioner. The court refused to force the witnesses to divulge their specific addresses and ruled that such specific or exact addresses were irrelevant. The court did require the witnesses, however, to state what area of Louisville they were living in.

A defendant has a constitutional right to cross examination of witnesses pursuant to the Sixth Amendment to the United States Constitution. Although wide discretion is given a defendant in cross examination, a decision as to when an impermissible barrier has been crossed is within the sound discretion of the trial court.

Petitioner relies on *Alford* v. *United States,* 282 U. S. 687, 51 S. Ct. 218, 75 L. Ed. 624 (1931), and

Smith v. *Illinois,* 390 U. S. 129, 88 S. Ct. 748, 19 L. Ed. 2d 956 (1968), for the proposition that the witnesses should have been required to give their specific home addresses. *Smith* v. *Illinois, supra,* is easily distinguishable, since the witness in that instance gave a fictitious name to the court and refused to give his address. No such problem of identification exists in the present case. In *Alford* v. *United States, supra,* the trial court had refused to require a witness to give his home address when it was represented by defense counsel that the witness was then in custody of federal authorities. The court held that there was no obligation on the court to protect a witness from being discredited and therefore it was prejudicial error under those circumstances for the court to fail to require the witness to give his address. In commenting on the extent of cross examination, the court noted:

> "The extent of cross examination with respect to an appropriate subject of inquiry is within the sound discretion of the trial court. It may exercise a reasonable judgment in determining when the subject is exhausted."
>
> *Id.* at 75 L. Ed. 629.

The Sixth Circuit Court of Appeals had occasion to examine both *Alford* v. *United States* and *Smith* v. *Illinois, supra,* in *United States* v. *Fife,* 573 F. 2d 369 (6th Cir. 1976). The court noted that in neither *Alford* v. *United States* nor *Smith* v. *Illinois* did the court lay down a *per se* rule that a witness must always be required to give his residence address. The court held in

Fife that even though the witness withheld his street address, he gave information as to his town, which had approximately fifteen thousand (15,000) population, and that the failure to give his street address in a relatively small community was not prejudicial error.

> ". . . [T]he purpose of *Alford* and *Smith* is achieved if sufficient evidence is admitted to identify the witness and locate him in his usual environment. The cross examination which was permitted in the present case produced this information."
>
> *Id.* at 377.

In the present case, each of the witnesses gave information as to the general geographical area in which they lived. A street address would not have helped petitioner's case in any way and would have been immaterial. The witnesses' fear of petitioner was a sufficient basis for the court to limit the inquiry to a geographical area instead of a specific street address.

Petitioner has failed to show that the Court of Appeals of Kentucky misapplied the law as to his constitutional rights on this issue, or that the decision is in conflict with a decision of this Court. The Petition for Writ of Certiorari on this issue should therefore be denied.

CONCLUSION

The Court of Appeals of Kentucky correctly applied the law in this case and its decision should be upheld. Petitioner has failed to show any compelling reason why this court should accept *certiorari*. For the reasons stated above, the Petition for Writ of Certiorari to the Supreme Court of Kentucky should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Robert V. Bullock, counsel for respondent, hereby certify that the foregoing Brief for Respondent in Opposition to Petition for Writ of Certiorari was served on petitioner by personally mailing three copies of the same to counsel for the petitioner, the Honorable Frank E. Haddad, Jr., Attorney at Law, 529 Kentucky Home Life Building, Louisville, Kentucky 40202, this 11th day of December, 1981. I further certify that all parties required to be served, have been served.

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Petitioner's Reply Brief

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No. 81-906

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

RIBHI SHUNNARAH - - - - Petitioner

versus

COMMONWEALTH OF KENTUCKY - Respondent

On Petition For Writ of Certiorari to
The Court of Appeals of Kentucky

PETITIONER'S REPLY BRIEF

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STATEMENT OF POINTS AND AUTHORITIES

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

No. 81-906

RIBHI SHUNNARAH - - - - *Petitioner*

v.

COMMONWEALTH OF KENTUCKY - *Respondent*

ON PETITION FOR WRIT OF CERTIORARAI TO
THE COURT OF APPEALS OF KENTUCKY

PETITIONER'S REPLY BRIEF

There exist several arguments raised in Respondent's Brief In Opposition which merit reply:

First, Respondent suggests that the Petitioner "has failed to demonstrate a conflict between the decision of the Court of Appeals of Kentucky and any provisions of the United States Constitution or decisions of this Court so as to warrant a review of the decision". [Respondent's Brief in opposition, p. 1.] This is not true. Petitioner has correctly pointed out that the opinion of the Court of Appeals of Kentucky, affirming the conviction of the Petitioner, has denied the Petitioner his Fourteenth Amendment right to due process of law and his Sixth Amendment right to trial by a fair and impartial jury under the United States

Constitution. Accordingly, the Petitioner has satisfied the jurisdictional requirements of 28 U.S.C. §1257(3).

Secondly, Respondent suggests that there is no preemption by the federal government of the state statute in this case "since there is no conflict between the state and federal statutes concerning the food stamp program". [Respondent's Brief in opposition, p. 8.] This is simply not true. It is obvious that the federal statute, §2024(b) of the Food Stamp Act and KRS 194.505(3) and KRS 194.990(2) are in direct and irreconcilable conflict. The federal statute provides that a person is guilty of a misdemeanor if he knowingly uses, transfers, acquires, alters, or possesses coupons valued at less than $100.00. The statute further provides that a person is guilty of a felony if such coupons are of a value of $100.00 or more. In sharp contrast, the Kentucky statutes dictate that an individual is guilty of a felony irrespective of the amount of the food coupons in question. In short, in Kentucky, a person unlawfully possessing food stamps valued at only 50 cents or $1.00 could be convicted of a felony. It is obvious that the punishment prescribed by the Kentucky statutes is in direct conflict with the federal standards.

Thirdly, the Respondent suggests that "a reading of the federal Food Stamp Act in conjunction with Kentucky Revised Statutes 194.500, et seq., leads to the unmistakable conclusion that Congress did not intend to supersede the state law as it relates to prohibiting the trafficking in food stamps". [Re-

spondent's Brief in opposition, p. 9.] This is simply not true. Petitioner submits that a reading of the federal Food Stamp Act in conjunction with KRS 194.500 et seq. evidences the federal government's intention to dominate and regulate the food stamp program. The state's only function is in administering the food stamp program in accordance with the federal regulations. However, even though the state has authority to administer the food stamp program, they must do so within the parameters of the federal regulations. Title 7 U.S.C.S. §2020(g) specifically prohibits the state from devising a plan which fails to comply with any of the provisions of the Food Stamp Act. We agree that the State of Kentucky has the authority to prosecute violators of the food stamp program. However, the Commonwealth of Kentucky must do so within the parameters prescribed by the federal regulations regarding violations of the food stamp program.

Fourthly, Respondent suggests that the Trial Court was correct in not accepting the Petitioner's instruction on ignorance of the law since, the "Petitioner chose not to testify in this case and without such testimony his claim must fail". [Respondent's Brief in opposition, p. 11.] This is simply not true. It is well settled that "where there is evidence in support of any defense offered by accused, which raises an issue of fact favorable to him, the court should present the issue by an affirmative instruction which fairly and fully declares the law applicable thereto, including the defining or explaining of the elements of the defense". 23 A C.J.S. Criminal

Law §1199, p. 509-511. There was testimony from the Petitioner's wife that no one from the Department of Agriculture had ever sat down and explained the intricacies and basic premises of the food stamp program to the ill-educated Petitioner. There was also testimony from the government's own witness, Mr. James Anderson, that there were no records in the Department of Agriculture's files that anyone from that office had ever explained the food stamp procedures to the Petitioner. [T.E. Vol. II, pp. 219-223, Vol. I, p. 63-67.] This evidence demonstrates that the Petitioner was not aware of the new food stamp regulations and, hence, mandated that the Trial Court render an instruction on his theory of defense, that being, ignorance of the law. By refusing to give that instruction, the Trial Court denied the Petitioner due process of law and his Sixth Amendment right to trial by a fair and impartial jury.

This instruction was mandatory since KRS 501.070 relieves a defendant of criminal liability if his ignorance or mistake negates the culpable mental state needed to establish the commission of the charged offense. The Trial Court committed reversible error in failing to give that statutory exception. See *State* v. *Cronk,* Ida., 307 P. 2d 1113 (1957).

Finally, in response to Petitioner's argument on the refusal of witnesses to give their specific addresses on cross-examination, the Respondent alleges that "Petitioner has failed to show that the Court of Appeals of Kentucky misapplied the law as to his constitutional rights on this issue, or that the decision is in conflict

with a decision of this court". [Respondent's Brief in opposition, p. 13.] We submit that the Court of Appeals of Kentucky has misapplied the holding of *United States* v. *Fife,* 573 F. 2d 369 (6th Cir., 1976). That case held that it was not error for witnesses to withhold their street addresses in a relatively small community of 15,000 population. The clear implication of *Fife* is that prejudicial error occurs when a witness withholds his address in a relatively large metropolitan area such as the one in the instant case, Jefferson County, Kentucky, which has a population of over 695,000. Most importantly, the court in *Fife* noted that the mere expression of apprehension by a witness who is reluctant to divulge his address is not sufficient justification for restricting cross-examination without further inquiry in an in-camera hearing. In the instant case the Trial Court made no such attempt to determine if there was any factual basis for the witnesses' mere expression of apprehension. Therefore, the Trial Court committed reversible error and denied this Petitioner due process of law and his Sixth Amendment right to trial by a fair and impartial jury.

For the reasons stated above and for those reasons set out in Petitioner's Writ of Certiorari, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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